



UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/241,508 02/01/99 EVANS

J P01.12-0042

IM22/0827

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221 MAIN STREET NO.  
SUITE 200  
STILLWATER MN 55082-5021

EXAMINER

BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

08/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/241,508

Applicant(s)

EVANS ET AL.

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 60-77 is/are pending in the application.
- 4a) Of the above claim(s) 75-77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 60-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on June 18, 2001 for an RCE based on parent Application No. 09/241,508 is acceptable and an RCE has been established. An action on the RCE follows.

### ***Election/Restrictions***

2. Newly submitted claims 75-77 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the election of the apparatus and method claims in paper no. 4 by the applicant rather than the product claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 75-77 have withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Objections***

3. Claims 67 and 71 are objected to because of the following informalities: they recite "serving" while it appears they should state "severing". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 60-70 and 73-74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 60 recites "at least approximately 6mm thick". It is not clear which dimension of the blunt dough engaging portion would be considered "thick".
7. Claims 60-61 and 63 recite "at least a surface portion that is not perpendicular to its direction of extension". It is not clear what limitation is meant to be implied by this phrase since it is not clear what the "direction of extension" is. It is not clear what "it" is.
8. Claim 67 appears to recite severing the dough with the "cutter edge" while parent claim 60 already recites severing the dough with the "dough shaping surface". It is not clear how they can each sever the dough.

Art Unit: 1761

9. Claim 68 recites "when viewed similarly". It is not clear what types of views would be considered similar.

10. Claims 69 and 73 recite "capable of being nested within other similarly shaped geometric figures". It is not clear what other figures would qualify as "similarly shaped" or what is meant to be conveyed by stating that they are "capable of being nested".

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 71 is rejected under 35 U.S.C. 102(b) as being anticipated by Carollo [Pat. No. 5,622,742].

Carollo teaches a method of cutting a dough sheet by providing a dough sheet with two surfaces (Figure 3, 14) and pinching the dough surfaces together while shaping and cutting the dough sheet with a blunt cutter (Figure 6, 42).

3. Claims 71-74 are rejected under 35 U.S.C. 102(b) as being anticipated by Makowecki [Pat. No. 5,687,638].

Makowecki teaches a method of cutting a dough sheet by providing a sheet of dough with two surfaces (Figure 1, 26), pinching the dough surfaces together while shaping and cutting the dough sheet with a cutter (Figure 5, 32), the cutter having blunt portions at an inner periphery (Figure 5, 41), cutting edges which are geometric figures at an

Art Unit: 1761

outer periphery (Figure 5, 39; Figure 3), the inner and outer peripheries being different shapes (Figure 5, 39 & 41), a conveyor (Figure 2, 28), and a steam cooker where the dough pieces would rise (Figure 2, 44).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carollo.

Carollo teaches a dough cutting device comprising a rounded blunt portion which pinches the dough surfaces together and then cuts them (Figure 6, 42). It would have been obvious to one of ordinary skill in the art to adjust the size and curvature of Carollo since Carollo teaches that size is a matter of design choice (column 5, line 34), since pan rims were commonly at least about 6mm in size, and since this would have been done during the course of normal experimentation.

6. Claims 60-64 and 67-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makowecki.

Makowecki teaches a dough cutting device comprising a cutter with a rounded blunt inner portion (Figure 5, 41), a cutter edge in the form of a flat tip on the periphery (Figure 5, 39), a rotatable drum (Figure 5, 30), the blunt portion and cutter edge having

different geometric shapes (Figure 5). It would have been obvious to one of ordinary skill in the art to vary the size and curvature of the round blunt portion of Makowecki since this would have been done during the course of normal experimentation and optimization.

7. Claims 65-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makowecki as applied above, in view of Simelunas [Pat. No. 4,534,726].

Makowecki teaches the above mentioned concepts. Makowecki does not teach a walking head. Simelunas teaches a method of cutting dough by use of a reciprocally mounted, walking head (column 5, line 66 to column 6, line 21). It would have been obvious to one of ordinary skill in the art to incorporate the reciprocally mounted, walking head of Simelunas into the invention of Makowecki since both are directed methods of cutting dough with blunt cutters, since Makowecki already includes a conveyor belt, and since the reciprocally mounted, walking head of Simelunas would press the blunt portion directly down into the dough (Figure 8) rather than entering at an angle as with the roller of Makowecki (Figure 5) and thus decrease the chance of damaging or misshaping the dough.

8. Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Makowecki as applied above, in view of RADEMAKER B.V.

Makowecki teaches the above mentioned concepts. Makowecki does not teach a hexagonal shape enclosing a circular shape. RADEMAKER B.V. teaches a cutting roller with hexagonal shapes and circular shapes within other shapes (page 14). It would have been obvious to one of ordinary skill in the art to incorporate the shapes of

Art Unit: 1761

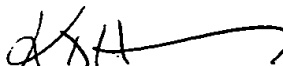
RADEMAKER B.V. into the invention of Makowecki since both are directed to rollable dough cutters, since Makowecki already includes substantially circular shapes (Figure 3), since the use of multiple shapes was commonly known as shown by RADEMAKER B.V., and since varying the shape of the cut dough would have been done during the course of normal experimentation and optimization.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew Becker  
August 16, 2001

  
KEITH HENDRICKS  
PRIMARY EXAMINER